

Box AF
EXAMINING GROUP #3743
ATTORNEY DOCKET NO:71229

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : KAUSCH
Serial No : 10/775,934
Filed : February 9, 2004
For : VENTILATION SYSTEM...
Art Unit : 3743
Examiner : Andrew M. Bunin
Dated : April 26, 2006

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE AFTER FINAL REJECTION
RESPONSE UNDER 35 CFR 1.116 EXPEDITED PROCEDURE

In response to the Final rejection dated March 7, 2006, Applicant provides the following
remarks:

REMARKS

Claims 1 - 15, 18, 19 and 20 are in this application and are presented for consideration.

Claim 21 has been rejected as being obvious over Rankin '452. Claim 21 sets forth that the hose system comprises a permeable tube section which is formed in a horizontally extending semi circle. The rejection states that, in Rankin '452, the tubes 106 are capable of being turned forward in order for the semi circle to become more horizontal. The rejection also appears to consider that the horizontal arrangement is a mere obvious matter of design choice. Applicant notes that the previous rejection of claim 21 did not make the above statements. Therefore it is applicant's position that the new rejection of claim 21 introduces a new ground of rejection. Applicant also notes that claim 21 has not been amended since the previous rejection. Therefore, as per MPEP 706.07 (a), the final rejection of claim 21 is improper. Applicant respectfully requests that the finality of the rejection of claim 21 be removed.

As described above, the rejection states that, in Rankin '452, the tubes 106 are capable of being turned forward. Applicant notes that the mere fact that references "can" be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination, MPEP 2143.01. Applicant finds no indication that the prior art suggests the desirability of a horizontal arrangement. Therefore it is applicant's position that the ability to modify Rankin '452 into a horizontal arrangement, is not an indication of obviousness.

Applicant notes that the horizontal arrangement is beneficial for a plurality of reasons.

One of the reasons, is that the horizontal arrangement places the breathing air close to the breathing organs of the user. The arrangement in Rankin '452 does not need to place the tubes 106 inside close to breathing organs of a user. This is understandable, since Rankin '452 has a separate system for supplying breathing air, and this separate system is separate from the safety suit. Therefore the horizontal arrangement in claim 21 is not a design choice, but instead provides a specific result, which is improving the delivery of breathing air to breathing organs. Furthermore, this particular horizontal arrangement of the permeable tube section provides the benefit that mucosa drying pressure and noise nuisance is minimized. The specification indicates in paragraph 4 that this is a problem in the prior art, and the specification indicates in paragraphs 11 and 13 that the present invention solves this problem. Therefore the above-mentioned paragraphs in the specification counter the statements supporting the horizontal arrangement to be an obvious matter of design choice.

Applicant further notes that the horizontal arrangement is beneficial for preventing the visor from fogging as described in paragraph 13 of the specification. The horizontal arrangement is further beneficial, in combination with the pressure relief valve 4 arranged in the rear area of the hood of the safety clothing as set forth in paragraphs 16 and 25 of the specification. This produces a flow that provides fresh breathing air to the breathing organs, and flows exhaled air away from the breathing organs, and toward the relief valve. This flow also prevents the fogging of the visor. If the Examiner desires, this feature can be added to the claims. In view of all the above, the horizontal arrangement of the permeable tube section is not a mere obvious matter of design choice, and instead causes claim 21 to define over the

applied prior art.

Claims 3 and 10 set forth similar features to the horizontal arrangement set forth in claim 21. Claims 3 and 10 therefore also define over the prior art for the above reasons.

Claim 15 has been rejected as being anticipated by Rankin '452. Claim 15 is a method claim and specifically sets forth the method step of delivering the breathing air from the permeable tube section to breathing organs of a user of the safety clothing. Applicant finds no specific teaching of this method step in Rankin '452. The rejection states that Rankin '452 discloses a passage 110 which is "capable" of providing breathing gas to breathing organs. However the "capacity" to perform a method step is not an actual teaching of that method step. Without an actual teaching of all the method steps of claim 15, Rankin '452 cannot anticipate all the method steps of claim 15. If Rankin '452 cannot anticipate all the method steps of claim 15, then Rankin '452 cannot anticipate claim 15. Therefore the failure of Rankin '452 to specifically teach the method step of delivering breathing air from the permeable tube section to breathing organs of a user, causes claim 15 to define over Rankin '452 and to not be anticipated by Rankin '452.

MPEP 706.02 IV states that "for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present." It is quite clear that Rankin '452 does not explicitly teach the process step of delivering breathing air from element 106 to breathing organs of the user. Especially since Rankin'452 has a separate system for that. Rankin '452 also does not imply that breathing air is delivered from element 106 to breathing organs of the user. Instead

Rankin '452 discloses that breathing air is delivered to the breathing organs of the user by structure which is separate from element 106. Therefore the process step of delivering breathing air from the permeable tube section of claim 15 is not implied or inherently present in Rankin '452. Claim 15 therefore further defines over Rankin '452.

Applicant further notes that claim 15 cannot be obvious in view of Rankin '452 because, as described above, the mere fact that references "can" be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. Applicant has reviewed Rankin '452, and finds no indication that the delivering of breathing air from the permeable tube section to breathing organs is desirable. Instead Rankin '452 leads the person of ordinary skill to provide a separate system for delivering breathing air to breathing organs. Therefore claim 15 further defines over the applied prior art because it would further not be obvious to modify Rankin '452 to create the invention of claim 15.

Claim 8 has also been rejected as being anticipated by Rankin '452. Claim 8 is a device claim and sets forth a passage from the permeable tube section to breathing organs of the user of the safety clothing. The rejection states that Rankin '452 discloses a passage 110 from the permeable tubular section 106 which is "capable" of providing breathing gas to breathing organs of a user. As described above, a passage which is "capable" of providing breathing gas to breathing organs, is not an actual teaching or disclosure of a passage that actually does provide breathing gas to breathing organs. Therefore, without a specific teaching or disclosure in Rankin '452 of structure which performs the "entire" function of the passage set forth in claim

8, the passage of claim 8 is not anticipated by Rankin '452. As also described above, the structure of the passage in claim 8 is not explicitly taught. Furthermore, the structure of this passage is not implicit or inherent, since Rankin '452 describes different structure for providing breathing air to breathing organs of user. Claim 8 therefore also defines over Rankin '452.

Claim 1 has been amended in the previous amendment to include the features of claim 20. Claim 20 depended from claim 1, and therefore the change to claim 1 is not a new issue. Claim 1 has been rejected in the present office action in view of new grounds of rejection, see page 11 of the office action. Since the change to claim 1 is not a new issue, the new ground of rejection was not necessitated by applicant's amendment. The rejection of claim 1 should therefore not be final.

Claim 1 has been rejected as being obvious over Rankin '452 in view of Childers '680. Claim 1 sets forth a hose system for bringing breathing air into the interior of safety clothing. The rejection uses Rankin '452 to disclose this hose system. Applicant has reviewed Rankin '452, and finds the elements equated in Rankin '452 with the present hose system flow cooling air, and not breathing air. Applicant further finds no suggestion nor motivation to modify Rankin '452 to have the elements in question flow breathing air. The rejection states that the cooling air can be read as a compressed air source for providing breathing air, and that the cooling air still broadly reads as being breathable by a user.


Applicant respectfully disagrees that the disclosure of cooling air in Rankin '452 anticipates breathing air. It is applicant's position that a person of ordinary skill in the art would not automatically consider cooling air to be breathable air. While it may be possible for

breathing air to be used as cooling air, breathing air requires a much higher quality than cooling air, and is therefore more expensive. Breathing air is generally considered to have a very few impurities, while cooling air usually has many impurities. Breathing air is often compressed with special compressors, such as "oil-less" or "oil free" compressors, so that contamination does not occur during the compressing. Cooling air on the other hand can be provided with a large range of different type of compressors, and therefore more cheaply. Furthermore, compressors delivering breathing air are usually heavily filtered, and arranged to draw air from a relatively clean source. Compressors delivering cooling air do not have to be heavily filtered, and can draw air from locations which would be completely unacceptable for breathing air, such as dusty locations or locations adjacent exhaust vents of other machinery. Therefore while breathing air may be usable as cooling air, a person of ordinary skill in the art would not equate cooling air with breathing air. Substituting cooling air for breathing air could have dangerous health consequences, and it is applicant's position that such a modification would not, and should not, be made. Therefore it is applicant's position that modifying Rankin '452 to use cooling air as breathing air is not suggested in the prior art. The modification of Rankin '452 as proposed in the rejections are therefore untenable.

If the Examiner has any comments or suggestions which would further favorable prosecution of this application, the Examiner is invited to contact Applicant's representative by telephone to discuss possible changes.

At this time Applicant respectfully requests reconsideration of this application, and based on the above amendments and remarks, respectfully solicits allowance of this application.

Respectfully submitted
For Applicant,

By: 
Theobald Dengler
Reg. No. 34,575

TD:tf
71229.10

DATED: April 26, 2006
BOX 9227 SCARBOROUGH STATION
SCARBOROUGH, NEW YORK 10510-9227
(914) 941-5600

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 13-0410.